

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-7036

September Term 2010

1:08-cv-01289-RMU

Filed On: November 16, 2010

Dick Anthony Heller, et al.,

Appellants

v.

District of Columbia, et al.,

Appellees

BEFORE: Ginsburg, Henderson, and Kavanaugh, Circuit Judges

O R D E R

It is, on the court's own motion, **ORDERED** that the parties file supplemental briefs addressing the following questions:

(1) After the Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified at D.C. Code §§ 1-201.01–1-207.71 (2001)), do gun laws passed by the District of Columbia Council have to be “usual and reasonable” within the meaning of the federal Act of June 30, 1906, Pub. L. No. 59-401, which is currently codified at D.C. Code § 1-303.43? *Cf. McIntosh v. Washington*, 395 A.2d 744, 749-54 (D.C. 1978); *Firemen’s Ins. Co. of Washington, D.C. v. Washington*, 483 F.2d 1323, 1327-28 (D.C. Cir. 1973); *Maryland & D.C. Rifle & Pistol Ass’n, Inc. v. Washington*, 442 F.2d 123, 125-29 & 125 n.9 (D.C. Cir. 1971); *Fulton v. District of Columbia*, 2 App. D.C. 431, 438-39 (D.C. Cir. 1894).

(2) What does the term “usual” mean in this statute? *Cf. Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Firemen’s Ins. Co.*, 483 F.2d at 1327-28; *Glover v. District of Columbia*, 250 A.2d 556 (D.C. 1969); *Filippo v. Real Estate Comm’n of the District of Columbia*, 223 A.2d 268 (D.C. 1966); *Black’s Law Dictionary* (2d ed. 1910) (defining usual to mean “ordinary” or “customary”). Is the canon of constitutional avoidance relevant to that question? *Cf. Fulton*, 2 App. D.C. at 438-39.

(3) Are the challenged D.C. laws “usual” within the meaning of this statute?

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(4) Does the D.C. Court of Appeals' interpretation of the congressionally enacted Act of June 30, 1906, or of similarly worded federal statutes, receive deference from the federal courts? *Cf. Bliley v. Kelly*, 23 F.3d 507, 511 (D.C. Cir. 1994). If so, under what circumstances?

The following briefing format and schedule will apply:

Supplemental Brief for Appellants (not to exceed 20 pages)	12/01/10
Supplemental Brief for Appellees (not to exceed 20 pages)	12/08/10
Reply Brief for Appellants (not to exceed 10 pages)	12/13/10

The United States is invited to file a brief, not to exceed 20 pages, on any or all of these questions by Friday, December 3, 2010.

In addition to electronic filing, the parties are directed to deliver paper copies to the court on the date due.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Cheri Carter
Deputy Clerk